

NO. 44886-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

DENNIS DEPOE,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Thomas P. Larkin, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

The State lacked jurisdiction to prosecute appellant for the false statement charge.

Issues pertaining to assignments of error

Appellant is an enrolled member of a Native American Tribe. He was charged with making a false or misleading statement to a public servant based on an incident which occurred within the boundaries of the Puyallup Reservation. Where the offense does not fall within one of the categories of cases over which the State assumes jurisdiction specified in RCW 37.12.010, must the charge be dismissed?

B. STATEMENT OF THE CASE

1. Procedural History

On September 19, 2012, the Pierce County Prosecuting Attorney charged appellant Dennis DePoe with felony driving under the influence, making a false or misleading statement to a public servant, driving while license suspended in the first degree, and failure to have an ignition interlock device. CP 1-3; RCW 46.61.502; RCW 9A.76.175; RCW 46.20.342(1)(a); RCW 46.20.720. The Honorable Linda Lee denied Depoe's motion to dismiss for lack of subject matter jurisdiction, and the case proceeded to jury trial before the Honorable Thomas P. Larkin. CP

34-37. DePoe was convicted on all four counts, and the court imposed a total sentence of 60 months confinement. CP 41-56. DePoe filed this timely appeal. CP 38.

2. Substantive Facts

On September 18, 2012, Ryan Sales, a police officer for the Puyallup Tribe, was dispatched to the parking lot of the Emerald Queen Casino to investigate a possible driving under the influence. 1RP<sup>1</sup> 12-13. When he arrived at the parking lot, he saw a car high centered on a cement parking curb. 1RP 13, 32. Dennis DePoe was walking away from the car. 1RP 14. Sales yelled at DePoe to come back, and DePoe complied. 1RP 15. DePoe denied that the car was his and said he had been helping the owner try to get it off the curb. 1RP 15-16.

Sales asked DePoe for identification, and he said he had none. He gave the name “Dezman DePoe,” spelling it for Sales, and provided a birthdate. 5RP 100-01. Sales ran the information through a database and found no record. When confronted, DePoe again said that was his name and birthdate. 5RP 102.

Sales noticed a backpack on the ground next to the open driver’s door of the car. When DePoe said it did not belong to him, Sales searched

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<sup>1</sup> The Verbatim report of Proceedings is contained in nine volumes, designated as follows: 1RP—4/16/13; 2RP—4/17/13; 3RP—4/18/13; 4RP—4/22/13; 5RP—4/23/13; 6RP—4/24/13; 7RP—4/25/13; 8RP—5/10/13; 9RP—5/17/13.

it to determine the owner. 5RP 103. Inside the backpack Sales found court documents with DePoe's name and correct date of birth. He ran that information and discovered that DePoe had warrants for his arrest. 5RP 104. He also learned that DePoe's driver's license had been suspended in the first degree and that he had an ignition interlock requirement. 5RP 105.

Officer John Scrivner arrived shortly after Sales made contact with DePoe, and he took control of the investigation. 5RP 117, 146. He arrested DePoe for providing false information, placed him in the back of a patrol car, and went inside the casino to view the surveillance video. 5RP 155. After viewing the video, Scrivner informed DePoe he was under arrest for driving under the influence, driving with license suspended, and an ignition interlock violation as well. 5RP 156.

Prior to trial DePoe moved to dismiss the charges for lack of subject matter jurisdiction, arguing that the incident occurred on tribal lands and he is an enrolled tribe member. CP 7. At a hearing before Judge Linda Lee, the parties stipulated that DePoe is an enrolled member of a federally recognized Native American tribe and that the entire parking lot of the Emerald Queen Casino is trust land within the Puyallup Reservation. 1RP 9-10.

The State also presented testimony that the casino surveillance video showed DePoe getting out of the car in the parking lot, walking to the casino, being refused entrance, returning to the car, and then the car moved forward in the parking space over the curb. 1RP 18. The video showed that same car driving on the road in front of the casino before it first pulled into the parking lot. 1RP 19. The court found that the road DePoe was driving on before entering the parking lot was a public road, and therefore it had subject matter jurisdiction pursuant to RCW 37.12.010, under which the State assumes jurisdiction over tribal members on property within a reservation for “[o]peration of motor vehicles upon the public streets, alleys, roads and highways”. 2RP 23; CP 34-37.

The case proceeded to trial before Judge Thomas Larkin, and DePoe moved to dismiss the false statement charge. 4RP 74. He argued that because that incident occurred in the parking lot, which is on tribal trust land, and did not involve the operation of a motor vehicle, the State lacked jurisdiction. 4RP 74. The State responded that since the false statement was part of the DUI investigation, the court should have jurisdiction over that charge as well. 4RP 75-76. When defense counsel pointed out that the statute does not specifically provide for jurisdiction over all charges arising out of a motor vehicle incident, the court stated that common sense would require that result. 4RP 77. The defense

renewed the motion to dismiss for lack of jurisdiction at the close of the State's case, and the court denied the motion. 5RP 204.

C. ARGUMENT

THE STATE DID NOT HAVE JURISDICTION TO PROSECUTE DEPOE FOR MAKING A FALSE STATEMENT ON TRIBAL LAND.

When the location of the crime is undisputed, the Court of Appeals decides the issue of territorial jurisdiction as a question of law. State v. Pink, 144 Wn. App. 945, 950, 185 P.3d 634 (2008). In this case, there is no dispute that the alleged false statement offense occurred in the parking lot of the Emerald Queen Casino, which the parties stipulated is wholly within the boundaries of the Puyallup Reservation. 1RP 9-10; 5RP 96, 101. Thus, this Court reviews the determination of whether the state court has jurisdiction *de novo*. Pink, 144 Wn. App. at 950.

The federal courts have exclusive jurisdiction to try enrolled Native Americans for most major crimes allegedly committed in "Indian Country." Pink, 144 Wn. App. at 949. The Washington Legislature has extended state court jurisdiction over enrolled Native Americans on tribal lands only in eight specific categories of cases:

- (1) Compulsory school attendance;
- (2) Public assistance;
- (3) Domestic relations;

- (4) Mental illness;
- (5) Juvenile delinquency;
- (6) Adoption proceedings;
- (7) Dependent children; and
- (8) Operation of motor vehicles upon the public streets, alleys, roads and highways

RCW 37.12.010<sup>2</sup>. Except for these eight categories, the State has no jurisdiction over enrolled tribal members for matters occurring on tribal lands. Id.; Pink, 144 Wn. App. at 952 (citing State v. Cooper, 130 Wn.2d

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<sup>2</sup> The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

- (1) Compulsory school attendance;
  - (2) Public assistance;
  - (3) Domestic relations;
  - (4) Mental illness;
  - (5) Juvenile delinquency;
  - (6) Adoption proceedings;
  - (7) Dependent children; and
  - (8) Operation of motor vehicles upon the public streets, alleys, roads and highways:
- PROVIDED FURTHER, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if chapter 36, Laws of 1963 had not been enacted.

770, 775-76, 928 P.2d 406 (1996)). The United States Supreme Court has upheld the Legislature's decision to assume jurisdiction over only these eight specified categories of cases. Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 499, 99 S.Ct. 740, 58 L.Ed.2d 740 (1979). Thus, even for crimes occurring on public highways within the reservation, the State has no jurisdiction over tribal members except as specifically set out in RCW 37.12.010(1)-(8). Pink, 144 Wn. App. at 955.

In Pink, the defendant, an enrolled member of the Quinault Tribe, was a passenger in a car stopped for a traffic violation on a public road within the Quinault Indian Reservation. Pink, 144 Wn. App. at 947. Pink identified himself, and the officers discovered he had outstanding warrants. Pink was arrested, and in a search incident to arrest the officers found a firearm. Pink was charged with unlawful possession of a firearm, and the trial court granted his motion to dismiss for lack of jurisdiction. Pink, 144 Wn. App. at 948. This Court affirmed, holding that the State lacked jurisdiction because Pink's alleged firearm violation did not concern the operation of a motor vehicle, since Pink was not operating the car at the time he possessed the firearm. Pink, 144 Wn. App. at 956. See also State v. Ambro, 142 Idaho 77, 123 P.3d 710 (Ct.App.2005) (under statutory exception similar to RCW 37.12.010(8), State lacked jurisdiction

to prosecute defendant for controlled substance she possessed on reservation, even though it was found during course of traffic stop on public road, because crime did not concern the operation or management of motor vehicle).

Similarly, in this case, the State lacks jurisdiction to prosecute the false statement charge. It is undisputed that DePoe was not operating a motor vehicle at the time he allegedly made the false statement: he was standing in the parking lot, outside the vehicle, when he spoke to the tribal officers. Moreover, the false statement he was charged with making concerned his identification. Because this charged offense did not involve the operation of a motor vehicle, it did not fall within the State's jurisdiction as set out in RCW 37.12.010.

The court below concluded it had jurisdiction over this offense as a matter of common sense, determining it was part of the same course of conduct as the driving offenses. 4RP 77; 5RP 204. The statute makes no provision for such an assumption of jurisdiction, however. It unambiguously limits State jurisdiction over enrolled tribal members on tribal lands to the eight categories of cases specified. See State v. Abrahamson, 157 Wn. App. 672, 683, 238 P.3d 533 (2010) (plain language of RCW 37.12.010 is unambiguous and not subject to statutory construction). Moreover, this Court has rejected the argument, relied on

by the court below, that common sense is sufficient to confer State jurisdiction over all offenses arising from the same incident. Pink, 144 Wn. App. at 956 n.9.

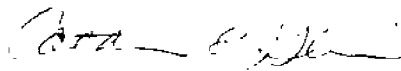
Because the false statement charge does not fall within any of the categories specified in RCW 37.12.010, the State does not have jurisdiction to prosecute DePoe for that offense. The charge must be dismissed.

D. CONCLUSION

The State lacks jurisdiction to prosecute DePoe for making a false statement, and that charge must be dismissed.

DATED October 3, 2013.

Respectfully submitted,



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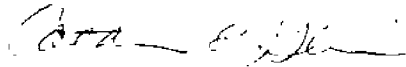
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Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326

I certify under penalty of perjury of the laws of the State of Washington  
that the foregoing is true and correct.



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Catherine E. Glinski  
Done in Port Orchard, WA  
October 3, 2013

# GLINSKI LAW OFFICE

**October 03, 2013 - 11:14 AM**

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